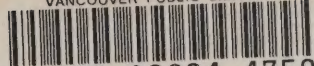




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PROVINCE OF BRITISH COLUMBIA

REPORT

RE THE

PACIFIC GREAT EASTERN
RAILWAY

BY

HON. MR. JUSTICE W. A. GALLIHER

of Court of Appeal of British Columbia
(appointed to Court of Appeal, Nov., 1909)

COMMISSIONER



VICTORIA, B.C.:

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1924.

COMMISSION.

J. A. MACDONALD,
Administrator.

CANADA:

PROVINCE OF BRITISH COLUMBIA.

GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

In the Matter of the "Public Inquiries Act," being Chapter 110 of the "Revised Statutes of British Columbia," and Amending Acts.

A COMMISSION.

To the Honourable Mr. Justice WILLIAM A. GALLIHER, of the City of Victoria, in the Province of British Columbia, one of His Majesty's Justices of the Court of Appeal of the Province of British Columbia,—GREETING.

A. M. MANSON, *Attorney-General,* } WHEREAS a certain political party calling itself "The Provincial Party" has represented that a resolution of the said party in Convention assembled, of 322 delegates from all parts of the Province, was as follows:—

"Resolved, That this Convention of 322 delegates of the Provincial Party from all sections of the Province demand that a Royal Commission should issue to thoroughly investigate the charges referred to in the petition hereto annexed, and that it be signed by at least ten members of the Convention and addressed to His Honour the Lieutenant-Governor in Council."

AND WHEREAS the said Provincial Party caused to be filed with the Honourable the Provincial Secretary, on or about the 8th day of December, 1923, a certain petition addressed to His Honour the Lieutenant-Governor of British Columbia in Council, which said petition purported to be signed by some sixty-six persons:


AND WHEREAS the prayer of the said petition is that a Royal Commission, clothed with the fullest powers to secure the attendance of witnesses, and the production of books, papers, and accounts from both Government officials and private parties, and bodies corporate as well, should issue to investigate certain charges in the said petition contained:

AND WHEREAS His Honour the Administrator, by and with the advice of his Executive Council, hath deemed it expedient to cause inquiry to be made into and concerning certain matters as hereinafter provided:

NOW, THEREFORE, KNOW YE that, reposing every trust and confidence in your loyalty, integrity, and ability, we do by these presents, under and by virtue of the powers contained in the "Public Inquiries Act," being chapter 110 of the "Revised Statutes of British Columbia, 1911," and amendments thereto, nominate, constitute, and appoint you, the said Honourable Mr. Justice William A. Galliher, our Commissioner to inquire into the truth or otherwise of the following allegations, to wit:—

"1. That in the years 1915 and 1916 the financial affairs of the Pacific Great Eastern Railway Company having become seriously involved, and the said Company desiring to secure further funds from the Province of British Columbia, to secure the goodwill of the representatives of the Conservative Party and of the Liberal Party in the Legislature, those interested in the said Railway Company made gifts of money to W. J. Bowser and William Sloan, representatives respectively of the Conservative and Liberal Parties, as follows:—

"(a.) The sum of fifty thousand dollars of the money of the said Railway Company or its contractors or persons associated or interested with them was drawn from the Union Bank and paid to the said W. J. Bowser, then a Minister of the Crown in British Columbia, and now Leader of His Majesty's Opposition in the Legislature:



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"(b.) And an approximately equal sum was drawn from the said Union Bank and paid to the said William Sloan, then a candidate of the Liberal Party interest and now Minister of Mines in British Columbia.

"2. That as a result of the two payments aforesaid—namely, to W. J. Bowser and to William Sloan—the promoters of the said Railway Company were assured of protection in any event of the then (1916) ensuing general election, and that, as a result of such contribution, protection and favourable treatment have been fully accorded to the promoters of the said Railway Company.

"3. That the acts of the Government of British Columbia and the Leader of the Opposition, the said W. J. Bowser, in the Legislative Assembly of British Columbia, since 1916, have been affected by the acceptance by W. J. Bowser and William Sloan of the gifts alleged to have been made to the said W. J. Bowser and the said William Sloan, as set out in paragraph numbered 1 hereof; and, further, that the people of the Province of British Columbia have been deprived of the benefit of an effective criticism by the Leader of the Opposition in the Legislative Assembly by reason of his acceptance of the gift of \$50,000 as alleged in paragraph numbered 1 hereof.

"4. That in the construction of 213 miles of the Pacific Great Eastern Railway there was gross waste of public money and the defrauding of the Province, in that:—

"(a.) The contract for the work was not let to the lowest tenderer, and no security was received from the Northern Construction Company, Limited (in the subsequent paragraphs hereof referred to as the 'Construction Company'), to whom the contract was let.

"(b.) The contract with the Construction Company was extraordinary in its terms.

"(c.) Additional mileage was constructed by the contractor, the Construction Company, without further public tender.

"(d.) Notwithstanding the terms of the contract with the Construction Company, based on unit prices, the unit prices were increased by the Chief Engineer of the Department of Railways, Mr. A. F. Proctor (in the subsequent paragraphs hereof referred to as the 'Chief Engineer'), with the consent of the Minister of Railways, after the contract was executed under seal, and without any further contract under seal.

"(e.) No proper check was kept upon the expenditures of the Construction Company, and no proper audit was made of the Construction Company's accounts paid, and when an allegedly competent and efficient auditor protested he was dismissed from office, though subsequently reinstated for a short period, and in the end an allegedly incompetent and inexperienced young man was appointed in his stead.

"(f.) No books of account were kept by the Construction Branch of the Railway Department.

"(g.) Expense accounts submitted by the Construction Company and paid by the Railway Company lacked details and were often excessive.

"(h.) The receipt of material and employment of labour on the construction grade of the Railway Company was checked very indifferently, if at all.

"(i.) Trade discounts due to the Railway Company were absorbed by the Construction Company.

"(j.) Personal freight accounts of employees were charged to the Railway Company and no refunds were given to the Railway Company for freights for employees, which included personal and household effects of all kinds and descriptions.

"(k.) Articles from the yards of the Construction Company turned in on the work at excessive prices, and the prices were not checked.

"(l.) Payments were made on all expenditures of the Construction Company represented by it to have been made, whereas that was not the result of the contract on its true construction.

"5. That the Minister of Railways, the Honourable John Oliver, was made aware by one Edward J. Rossiter, Auditor-Accountant in connection with certain construction-work of the Railway Company, of irregularities in the accounts and payments in connection with the said construction, and the only result thereof was the dismissal of the said Rossiter.

"6. That the Minister of Railways, Honourable John Oliver, on the 16th day of March, 1920, and on the 26th day of March, 1920, contrary to the facts, stated in the Legislature as follows: 'All payments made to the Northern Construction Company have been made on actual expenditures duly vouchered and carefully checked by the Pacific Great Eastern Railway Company officials,' which statement the said Honourable John Oliver knew to be contrary to the facts.

"7. That the Minister of Railways, Honourable J. D. MacLean, on the 9th day of November, 1922, stated in the Legislature as follows: 'In the ordinary course of routine every account submitted by the contractor' (meaning thereby the Construction Company) 'is audited by an official of the Railway Company' (meaning thereby the Pacific Great Eastern Railway Company) 'and the quantities checked by an engineer,' which statement, to the knowledge of the said Honourable J. D. MacLean, was absolutely untrue.

"8. That many thousand dollars' worth of stores were taken illegally from the stores of the Construction Company on Pacific Great Eastern Railway construction and improperly charged up by the said Construction Company as part of the construction cost of the said railway under its contract with the said Railway Company during the whole time of the said contract. The process of the illegal taking was that certain contractors' employees were improperly allowed board in addition to their salaries and given anything they required for themselves and their families in the way of food, clothes, etc., from the store of the Construction Company without account of same being taken or payment made therefor; and, further, that a similar practice was also carried out by employees of the Railway Company.

"9. That material and equipment to the value of many thousands of dollars were supplied by the Construction Company to the Pacific Great Eastern Railway from the ship-building yard at False Creek of the said Construction Company and from other places, without any of said material or equipment being passed upon in any way by any one in the employ of the Government or the Railway Company as to price or quality of such material or equipment, in fraud of the Railway Company by reason of the fact that the Construction Company charged for the said material and equipment supplied as aforesaid prices in excess of the actual value of the same.

"10. That construction material such as lumber, feed for horses, and general material used for construction, to the value of many thousand dollars, were supplied on account of the Construction Company and charged to the Railway Company without independent check being made on behalf of the Government or the Railway Company as to price, etc., in fraud of the said Railway Company by reason of the fact that the Construction Company charged for said material prices in excess of the actual value of the same.

"11. That the Chief Engineer refused a certain lumber firm—to wit, the Consumers Lumber Company—any business in connection with the construction of the Pacific Great Eastern Railway by the Construction Company, though it was allowed to quote prices on certain lumber, because of the fact that it quoted better prices than another firm, and the said Chief Engineer interfered as to where business should be placed by the Construction Company in connection with its contract for the construction of the said Pacific Great Eastern Railway, and stated to the aforementioned Rossiter that no 'outsiders' were going to get any business in connection with the contract except those he, the said Chief Engineer, approved of, and the Minister of Railways, Honourable John Oliver, though cognizant of the foregoing facts in this paragraph mentioned, refused to interfere with the decision of the Chief Engineer.

"12. That expense accounts of employees of the Construction Company and of the Railway Company amounting to some thousands of dollars were dishonestly charged as a portion of the cost of the construction of the Pacific Great Eastern Railway by the Construction Company, and certain 'Head Office expenditures,' amounting up to the 31st December, 1918, to \$12,300 per annum, and from that date to \$17,100 per annum, were dishonestly charged by the Construction Company as a portion of the cost of construction under its contract for the construction of the Pacific Great Eastern Railway.

"13. That the aforementioned Rossiter, Construction Accountant in the Construction Department of the Railway Company in connection with the construction of the Pacific Great Eastern Railway by the Construction Company, was by an act of treachery tricked into vouching accounts which no reputable firm of accountants would have passed for payment, the said act of treachery being that he, the said Rossiter, was induced to vouch and did vouch accounts totalling somewhat less than \$110,000 on the strength of the statement to him of the Chief Engineer that the said accounts would be finally passed upon by a firm of chartered accountants.

"14. That the Construction Company illegally and improperly were permitted to include as a portion of the cost of construction payments to the Workmen's Compensation Board in connection with Pacific Great Eastern Railway construction.

"15. That the Premier, the Honourable John Oliver, failed to investigate matters referred to in a memorandum from the said Rossiter bearing date the 16th day of December, 1919, and

also failed to interest himself or interfere in the matter of complaints contained in the said memorandum, and the memoranda, copies of which were attached to the said memorandum; and the said Premier, though, as it is alleged, fully cognizant of the alleged unsatisfactory conditions and alleged irregularities in the estimates of the Construction Company, took no steps to investigate the same, though he promised so to do.

"16. That the sum of \$54,659.49 was improperly, dishonestly, and illegally paid to the Construction Company in connection with certain culvert and cribbing work done by P. J. Finnerty and Murdock & Company, sub-contractors under the Construction Company in connection with the construction of the Pacific Great Eastern Railway, which said sum was twenty-one times what the Construction Company was actually and legally entitled to receive for the said work under the terms of the contract between the Railway Company and the Construction Company."

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent, and the Great Seal of the said Province to be hereunto affixed.

WITNESS, HIS HONOUR JAMES ALEXANDER MACDONALD, Administrator of the Government of Our said Province of British Columbia, in Our City of Victoria, in Our said Province, this twentieth day of February, in the year of our Lord one thousand nine hundred and twenty-four, and in the fourteenth year of Our Reign.

By Command.

[SEAL.]

W. H. SUTHERLAND,

Acting Provincial Secretary.

Re PACIFIC GREAT EASTERN RAILWAY.

REPORT BY HON. MR. JUSTICE GALLIHER, COMMISSIONER.

*To His Honour the Administrator of the Government of
the Province of British Columbia.*

MAY IT PLEASE YOUR HONOUR,—A Commission under the Great Seal, and bearing date the 20th day of February, 1924, was issued to me directing and empowering me to hold an inquiry into certain charges made by a body known as "The Provincial Party."

The charges comprised sixteen in number, with several subclauses, which are dealt with seriatim in the following pages.

The exhibits submitted in evidence during the proceedings numbered 319, being records and correspondence from the files of the Departments of Railways and Finance. It not having become necessary, for the purposes of my Report to Your Honour, to set out any of these exhibits here, they have been returned to the departments to which they respectively belong.

The transcript of the shorthand notes of the evidence, contained in six books, are herewith submitted, together with my findings in this my report.

By virtue of such Commission I did on the 25th day of February, 1924, in the Members' Room of the Legislative Buildings in the City of Victoria, proceed to inquire into the several matters set out in said Commission, all parties interested being represented by counsel.

The first matters dealt with by me were concerning the following charges:—

"1. That in the years 1915 and 1916 the financial affairs of the Pacific Great Eastern Railway Company having become seriously involved, and the said Company desiring to secure further funds from the Province of British Columbia, to secure the goodwill of the representatives of the Conservative Party and of the Liberal Party in the Legislature, those interested in the said Railway Company made gifts of money to W. J. Bowser and William Sloan, representatives respectively of the Conservative and Liberal Parties, as follows:—

"(a.) The sum of fifty thousand dollars of the money of the said Railway Company, or its contractors or persons associated or interested with them, was drawn from the Union Bank and paid to the said W. J. Bowser, then a Minister of the Crown in British Columbia, and now Leader of His Majesty's Opposition in the Legislature.

"(b.) And an approximately equal sum was drawn from the said Union Bank and paid to the said William Sloan, then a candidate of the Liberal Party interest, and now Minister of Mines in British Columbia.

"2. That as a result of the two payments aforesaid—namely, to W. J. Bowser and to William Sloan—the promoters of the said Railway Company were assured of protection in any event of the then (1916) ensuing general election, and that, as a result of such contribution, protection and favourable treatment have been fully accorded to the promoters of the said Railway Company.

"3. That the acts of the Government of British Columbia and the Leader of the Opposition, the said W. J. Bowser, in the Legislative Assembly of British Columbia, since 1916, have been affected by the acceptance by W. J. Bowser and William Sloan of the gifts alleged to have been made to the said W. J. Bowser and the said William Sloan, as set out in paragraph numbered 1 hereof; and, further, that the people of the Province of British Columbia have been deprived of the benefit of an effective criticism by the Leader of the Opposition in the Legislative Assembly by reason of his acceptance of the gift of \$50,000 as alleged in paragraph numbered 1 hereof."

Mr. L. G. McPhillips, K.C., Mr. McTaggart appearing with him, for the Provincial Party, proposed to direct evidence to an inquiry into campaign funds generally.

This I ruled out as not within the jurisdiction given me under the Commission, and he then proceeded with regard to the specific charges.

Mr. McPhillips intimated that he had several witnesses to call, and proposed to call Mr. Bowser, one of the persons accused, first intimating that he had prepared along that line, and could best conduct the inquiry in that way.

I intimated to Mr. McPhillips that, in my view, that would be unfair to the accused, and that he should at least call some evidence, showing that there was some ground for bringing the charges.

Mr. McPhillips did not accede to my suggestion and pressed for a ruling, which I gave in accordance with my views.

He then asked for a short adjournment to consult with other counsel appearing for the Provincial Party in the general inquiry, and upon returning, stated that, in view of my ruling, they would assume no responsibility for the outcome of the inquiry, but would stay and assist me in questioning witnesses, a list of whom he handed me containing a dozen or more names.

I, of course, accepted, and was appreciative of their assistance.

Whether Mr. McPhillips accepted or did not accept any responsibility, there was a responsibility cast upon me from the very first, and which continued throughout, and that was to conduct the inquiry in a fair and impartial manner towards all parties concerned.

In a Court of law in civil actions where certain rules and procedure have been so long established and followed, I would not for a moment consider interfering with the order in which witnesses should be called; in fact, a plaintiff could examine a defendant for discovery before trial, and put that evidence in at the trial, or he could at the trial call the defendant as his witness at any time and in any order he chose.

On the other hand, if it were a criminal trial, he could not call the accused at all.

My reasons for ruling against Mr. McPhillips were, shortly, these:—

There do not appear to be any specific and definite rules laid down as to procedure in matters of this kind.

It is largely in the discretion of the Commissioner which course he should pursue, and in such a case one will meet with different views expressed by different Commissioners.

But there is one view which I think should be taken by all, and that is that no unfairness should be permitted against any person accused, for, after all, it is a good principle to follow that an accused should not be presumed to be guilty simply because he is charged with an offence.

The charges laid here were of a specific and particular nature—the parties alleged to have paid, as well as those alleged to have received, were named; the specific amount was stated and the bank from which these sums were allegedly drawn, named.

In view of all this, it seemed to me only fair that some evidence should have been tendered to show *bona fides* in laying the charges before calling on the accused in an attempt to convict him out of his own mouth, and to have ruled other than I did would have been ruling against my own strong convictions.

The inquiry then proceeded, Mr. McPhillips and Mr. McTaggart assisting me by examining certain witnesses called.

When Richard T. Elliott, a solicitor, was called, privilege was claimed and a ruling was asked.

In an action brought by the Attorney-General of British Columbia and the Minister of Finance against Timothy Foley, Patrick Welch, John W. Stewart, Pacific Great Eastern Railway Company, D'Arcy Tate, E. F. White, F. Wilson, Pacific Great Eastern Development Company, Limited, and Pacific Great Eastern Equipment Company, Limited, and in the Statement of Claim filed therein on the 1st September, 1917, in paragraph 47 certain charges of fraud and corruption were made against the defendants, among them the dishonest and corrupt payment of moneys to members of the then Government and members of the Legislature, and included in which would be the sums in the specific charges under inquiry.

Mr. Elliott was retained as solicitor by the defendants to prepare their defence and conduct their case, and asked to be excused from answering any questions pertaining to private communications with his clients, or information he had acquired in the course of preparing their defence.

This privilege was also claimed by his clients, whose privilege in fact it is.

The same Government that brought the action has now directed the present inquiry affecting the same parties as to these specific charges, so that the subject-matter and the parties to that extent are the same.

Mr. McPhillips relied chiefly on this: that where fraud is charged there is no privilege.

With respect, I think that is stating the law too broadly.

I think there is this distinction between where fraud is charged and where it is not: that in the case of fraud, where it is something done or obtained in furtherance of fraud, then no claim for privilege can or will be allowed.

The text-books give examples, and one example would be: Where "A" goes to his Solicitor "B" and they devise ways and means and acquire information and employ methods by which "A" may or does commit a fraud upon "C"—e.g., depriving him of his property—then in such a case there is no privilege, and it would be unthinkable that there should be.

If for no other reason than on grounds of public policy this would be held wrong.

The case before me was entirely different, and I ruled in favour of the claim for privilege.

After making this ruling, Mr. McPhillips announced that he could be of no further assistance to me, and he and Mr. McTaggart withdrew.

With the assistance of Mr. Taylor, who appeared for the Government, I proceeded to examine certain other witnesses, and counsel for Mr. Bowser and Mr. Sloan tendered their clients for examination without my suggesting it.

With a view to preventing any possible equivocation, I put certain definite and comprehensive questions to each of these witnesses and received a definite denial to each.

There being then no evidence to support the charges, the whole evidence being a denial of same, the charges must necessarily fail, and I so hold.

The other charges, Nos. 2 and 3, linked up with 1 (a) and (b), of course fall with them.

I next proceeded to inquire into the charges contained in paragraph 4, which begins as follows:—

"4. That in the construction of 213 miles of the Pacific Great Eastern Railway there was gross waste of public money and the defrauding of the Province, in that"—and then follows a number of subparagraphs, (a) to (l), inclusive, setting out the manner in which such moneys were wasted and the Province defrauded, and which I will deal with seriatim.

At the outset, Sir Charles Hibbert Tupper, K.C., and Mr. A. H. MacNeill, K.C., who represented the Provincial Party, with whom was associated Mr. D. S. Tait, stated that they were not making and had not made any charge of fraud against the Government.

As the charge is laid in the Commission, it was necessary to go into all the evidence, and if fraud on the part of the Government could have been shown, it would have been my duty to so find.

I find that nothing from which such inference could be drawn appeared in the course of the inquiry, and I, as Sir Charles and Mr. MacNeill did in the beginning, absolve them from any such charge.

Then, as to the gross waste of public money as set out in the respective subparagraphs:—

In approaching an inquiry of this nature, much depends upon the mental attitude in which it is undertaken.

If one approaches it with a suspicious mind, then matters that on their face, as ordinarily viewed, would create little or no suspicion, might, under such a state of mind, loom suspicious.

On the other hand, if one views it in the light that a Government can do no wrong, many occurrences would not be given due weight.

The proper way is to approach it with an open mind, and I think it only fair to assume that a Government elected by the people to carry on the public affairs of the people, and to represent them in that capacity, may be reasonably expected to carry on efficiently and honestly until the contrary is shown.

They have to answer to the people, and if they fail, the remedy is in the hands of the people.

It is not my purpose to quote to any great extent from the evidence, which would render the report burdensome and would serve no good purpose. Much of it has been already published in the press, and it will all be on file with my report.

I have sifted it out and formed my conclusions upon it.

With this preliminary digression, I will proceed to deal with the different paragraphs:—

(a.) The contract for the work (the first 42 miles) was not let to the lowest tenderer, and no security was received from the Northern Construction Company, who were awarded the contract.

This is not unusual; in fact, most requests for tenders now contain the provision that the lowest or any tender is not necessarily accepted.

In passing upon tenders, the Government would be guided largely by the advice of their Chief Engineer, and Mr. Proctor's evidence on this satisfies me, and should have satisfied the Government. The same remarks apply to why no security was demanded from the Northern Construction Company.

(b.) The contract with the Construction Company was extraordinary in its terms.

This has reference chiefly to the fact that it was what is known as a cost plus bonus contract.

I do not think I can do better than include in my report the findings of Mr. J. G. Sullivan, Consulting Engineer, whose views on such matters would carry great weight.

Mr. Oliver, while Minister of Railways, employed Mr. Sullivan to make a report on the Pacific Great Eastern Railway.

The report is dated June, 1922, and at pages R 17 and R 18 of the report, under the heading, "Was the work carried out, since the Government took charge, economically performed," we find the following:—

"To answer this question fully would require a detailed study away beyond the scope of my investigation. As the work was performed on a cost plus percentage basis, it would involve an investigation of the methods and organization in detail of the contractor's operations. I would not be justified in undertaking such an extensive detailed investigation without further instructions, and I cannot see any object to be gained by going further into this matter, other than to state that I do not believe that the cost plus percentage basis is an economical method of performing work unless you can introduce into the contract a bonus clause that will act as an incentive to the contractor to keep cost of the work down. No matter how honest or efficient your contractors may be, the foremen and the labourers will not work efficiently when they have the idea that the more the work costs the more the contractor will make, and the less they will do the more work there will be. *In the case of the Pacific Great Eastern Railway contract this feature was taken care of by the contractors submitting a schedule of the estimated cost of the work.* With an understanding that the sum on which a percentage would be paid would not exceed the sum the work would cost if figured at the unit prices in the schedule, and a further stipulation that if the actual cost of the work was less than what the work would have cost, figured at the schedule price, then the contractor was to receive as a bonus 25 per cent. of such saving in addition to their agreed percentage on the cost. This agreement, coupled with the fact that the company engaged a firm of contractors with a national reputation, would indicate that the work should be performed as economically as it was possible to do the work in 1919 and 1920, when prices were uncertain and wages at the highest point they have ever reached and the efficiency of labour at the lowest ebb in our time. Under such conditions it would have been impossible to do work under any plan that would be considered economical. If you had decided to have the work done on straight unit prices, I believe the contractors, to protect themselves, would have tendered a figure so high that the work would have cost even more than it did under the plan adopted by the company. If there is any criticism to make on the action of the Government management it would be for proceeding with the work when construction costs were from 50 to 100 per cent. higher than normal, and when the rates paid for money was at least 25 per cent. higher than normal, and at a time when practically all other industrial expansion was at a standstill.

"O.—WERE DECREASES AND INCREASES IN UNIT PRICES OF ORIGINAL CONTRACT JUSTIFIED?

"I do not believe in the principle of altering the terms of a contract, for the reason that if the possibility of changes in conditions of a contract becomes public, the result is that irresponsible contractors will take all kinds of chances in order to get work, depending on their being protected against loss by their ability to get changes in the contract. In this particular case there were many extenuating circumstances. In the first place, the schedule of prices was only an estimate of cost in which the percentage and possible bonus was based. Second, the original schedule was for a considerably less amount of work than what was finally accomplished under the original agreement. Third, in the spring of 1919, when the first reduction was made, it was generally believed at that time that the peak of high prices had been reached. The first of these reasons does not seem to be fully understood; as a matter of fact, the contract itself is a unit price form, and it is only by a study of the tender attached to the contract that one can determine the type of contract as between a unit price contract and a cost plus percentage contract. There is no doubt whatever as to the class of contract; it is a cost plus percentage contract with a bonus clause, and some criticism in the Legislature to the effect that the contractors were paid some \$700,000 more than they were entitled to by the original agreement is not a fact. The increase in unit prices in 1920 for percentage purposes

had this effect: Under that schedule the work estimated by the engineers' figures at the increased prices increased the total on which a percentage of $5\frac{1}{2}$ per cent. was calculated by \$644,335.44, thus increasing the amount the company paid the contractors by \$35,434.45, and up to date the cost of the work to the contractors has been some \$300,000 greater than the engineers' estimate of the work computed at the revised unit prices; therefore, to date, the question of bonus has not entered into the question. Another criticism was that the head contractors let the work to stationmen and small contractors at prices less than the schedule in force at the time. This practice was perfectly justified and a most economical method. In the spring of 1919, when prices began to drop, it certainly looked like good business to reduce the schedule prices on which a bonus would be calculated, and the company had an opportunity of doing this when they were ordering more work under the original agreement; however, having made this reduction in 1919, when prices rose in 1920 the only logical action the company could take was to follow the precedent they had themselves established. The results so far are as follows: The lowering of the schedule in 1919 lowered the amount on which percentage was calculated by \$16,924.46, making a saving to the company of \$930.85. The net loss to the Government to date on account of change in schedule is \$34,503.60. How these changes in schedule will affect the bonus is yet to be determined, while the cost of work performed to December 31st, 1921, is some \$300,000 greater than the amount of the engineers' estimates. Multiplied by the schedule prices, the crediting of stores on hand and the final estimate may very materially affect these figures. The present information at hand is not sufficient to warrant my passing an opinion as to whether or not there should be any bonus under the terms of the agreement. I may suggest that on account of the nature of some of the work, cleaning out mud-slides, etc., where the cost is out of all proportion to quantities handled at usual unit prices. The cost in such cases might be the controlling factor rather than measurements in estimating amount of material moved; the Government would be well advised to carefully look into these features before paying any bonus on this contract."

In addition to this, there is the evidence of Mr. Proctor and Mr. Swan, both experienced engineers, as to the advisability of entering into such a contract under the conditions then existing.

All this satisfies me that there is nothing unusual or extraordinary in contracts of this kind.

(c.) Additional mileage was constructed by the contractor, the Construction Company, without further tender.

This is admitted, and, shortly, the reasons given are that where a contractor is under contract to perform a certain work for which tenders have been called, and his showing is satisfactory, and where further work is contemplated in connection with the same undertaking, he, having his plant, equipment, and following on the work, and where acceptable terms can be obtained from him, it is deemed advisable to continue with the original party rather than call for tenders, break up the organization, and run the risk of, in the end, probably increasing the cost.

That *sounds* like common-sense business tactics to me, and is done by large railway corporations.

(d.) Unit prices were increased by the Engineer with the assent of the Minister of Railways after the contract was signed and without further contract.

This is covered by correspondence put in.

Again, in this connection, I would refer to the extract quoted from Mr. Sullivan's report, under the heading, "Were decreases and increases justified?"

There was no increase on the first 42 miles. (Page 1647 of the evidence.)

In the spring of 1919, when conditions were easier and prices began to drop, the Government entered into correspondence with the Northern Construction Company, they in turn taking it up with Murdoch & Company, and these negotiations led up to a reduction being asked and acceded to on schedule prices. (See page 1648.)

In 1920, when conditions again changed and prices rose, the Northern Construction Company and Murdoch & Company asked for a revision upwards, which was granted. (Page 1648.)

Then in 1921 a revision downwards was again made by the Government.

The reasons for doing so are all set out in the evidence, and are, in my opinion, sufficient. (See also pages 1839, 1845, 1856, 1859, and 1867.)

This was discussed from every angle by the Premier and the Chief Engineer. (Page 1862.) (See further reasons in evidence of Mr. Oliver, pages 2315 and 2316.)

It was suggested that it was no concern of the Government whether Murdoch & Company went broke on their contract as it stood or not.

It was the people's money that was being disbursed and the Government could have taken over the work themselves, and that is true to a certain extent.

Leaving aside the question that the Government had first revised downwards the schedule of prices under the contract, and the fairness or unfairness of refusing to revise upwards when conditions changed so as to warrant it, and whether they were obliged to do so or not, there was this question for them to consider (and that is dealt with by Mr. Oliver towards the end of his evidence, and, I may say, was present to my mind from the first): that by exacting their pound of flesh (assuming that they were entitled to) they might not find in the end that the work would cost much more.

If what would appear to be reasonable arrangements (and I think these were) could be made, I doubt if the Government, in the interests of the people, would have been justified in embarking on the experiment of carrying on the work themselves or breaking up the existing organization.

Subclauses (e) and (g) deal with no proper check kept on the expenditures of the Construction Company and no proper audit made of their accounts; lacked details and were excessive.

As to these, see evidence of Proctor at pages 1693, 1694, 1700, 1713, 1717, and 1718; also my remarks later on in the report.

DeLacey's evidence, which I will refer to later, is also applicable to (e).

The evidence referred to in dealing with paragraph 12 is in part applicable to this also.

These charges fail.

Subclause (f): No books of account kept by the Construction Branch of the Railway Department.

This is admitted, but except that it might have been more convenient for reference, I can see no object in this, as these books would be compiled from the very files in the Department, which were always there for reference.

Major Swan, an independent engineer, says he does not do this in railway-work of which he is in charge. Mr. Gyles, at page 1414, says it is a matter of opinion—would have involved a lot of employees.

To have done this, according to Proctor's evidence, would have entailed a large extra expense. (Considered at the beginning page 1692; page 1693.)

Subclause (h): Receipt of material and employment of labour on the construction grade of the Railway Company was checked very indifferently, if at all.

Subclauses (e), (g), and (h) are more or less interwoven, and in addition to what I have already said, I wish to refer particularly to the evidence of DeLacey, who was an employee of the Northern Construction Company as book-keeper on the work.

I think no one can read that evidence without being impressed with the absolute honesty of the witness, and the careful, thorough, and impartial manner in which he discharged his duties, not only to his own employers, but as he saw it, as well in the interests of the Government.

It is seldom I have been so favourably impressed by a witness in the box, and I am fully convinced that everything in his charge was absolutely accounted for and properly dealt with.

Subclause (i): Trade discounts due to the Railway Company were absorbed by the Construction Company.

The evidence is to the contrary. (Pages 1721 and 1722 of the evidence.) The Government received the benefit of these. (See also Rossiter at pages 913 and 917.)

Subclause (j): As to personal freight accounts of employees.

This fails absolutely, except as to certain personal effects of married employees who moved their families out to the work, and this I hold not unreasonable.

Subclause (k): This is dealt with in my finding as to paragraph 9 of the charges.

Subclause (l): Payments were made on all expenditures of the Construction Company represented by it to have been made, whereas that was not the result of the contract on its true construction.

The whole battle on this point waged around the interpretation to be placed on the words "actual cost" in the contract.

Mr. MacNeill's position was that the Northern Construction Company should have dealt directly with stationmen, thus eliminating sub-contractors, and that the cost should have been, so far as work was concerned, the actual cost paid the stationmen.

Construed in a narrow sense, that might be so, but in view of the evidence given as to the custom and practice of railway corporations and others carrying on works of any magnitude, of employing sub-contractors to intervene between the original contractors and the stationmen, and the advantages of so doing, and taking a reasonable view of what would be in the minds of the parties to the original contract respectively having knowledge of such, "actual cost" should be construed to mean actual cost to them, and that that would include the method adopted here for carrying on the work.

Any other construction would, I think, be too narrow.

Paragraph 5 of the charges is disproved by the evidence so far as the actions of the Minister are concerned.

Paragraphs 6 and 7, as to the statements made in the Legislature by the Hon. the Minister of Railways, John Oliver, on the 16th and 26th of March, 1920, and by the Hon. Minister of Railways, J. D. MacLean, on the 9th of November, 1922, respectively, may be dealt with together in a few words.

Little or no stress was laid upon these in the inquiry, Sir Charles Tupper, as an old parliamentarian, stating that he was aware these statements were prepared for the Minister by some official in the particular department and brought down by the Minister, and as they were not charging that these statements were untrue to the knowledge of the Ministers, they might, as I think he expressed it, sleep easy on that score.

Moreover, it depends just how broadly or narrowly one construes the words used.

Paragraph 8, relating to the supplying of board, food, clothes, etc., to employees and their families without charge, is absolutely disproved by DeLacey.

Paragraph 9: Charging that large quantities of material and equipment from the yards of the Construction Company at False Creek were supplied to the Railway Company without same being passed upon in any way as to price or quality by any one in the employ of the Government or Railway Company.

Subparagraph (k) of 4 is also dealt with in this.

Reference is made to the evidence of Proctor, at page 1706:—

The shipments of materials from the shipyards or other places of the Northern Construction Company went through the same checking as the others.

Personally went over each of these vouchers, and satisfied himself that the prices were fair and reasonable.

Bright also went over the material on arrival, and in many cases put values on them himself.

Murdoch, in this connection, pages 2111, 2113, 2114:—

2111: Was superintendent for Northern Construction Company in 1918. The first shipments of material and equipment sent from Kamloops, Port Alberni, and other points. Value was \$10,000 to \$16,000. All were invoiced. Was present when values placed upon them by Captain Bright, representing the Government, and Murdoch as Northern Construction Company. Took shipment as men knowing their business, and if did not agree, did not fight, but argued the point. One of them put the figures on paper.

2113: Smith was on the work checking up material as it went in. Belbeck was there later, checking the material and looking after the supplies and material, but particularly the heavy material.

2114: Captain Bright kept as close check on that work as Murdoch did. Apparently duplicating each other's work in this regard.

Also DeLacey, pages 1496, 1498, 1499, 1500 to 1505, inclusive, 1508, 1510, 1512, 1513, 1515, 1520, and 1528:—

1496: Was with the Northern Construction Company at Chasm in September, 1918, accountant at headquarters in the field.

1498: Captain Bright came to the Northern Construction Company office every day and went over all the work done before. Looked upon Captain Bright as my boss; gave him all the information he asked for, and also what I thought he might want, so that he would have a thorough understanding of what was going on. Always had a summary before him of labour, classification, supplies issued.

1499: Sub-contractors' advances and statements were always available.

1500: Everything listed at the warehouse door as it came in and then checked with the invoices.

1501: Everything going out went on written order, checked off, and priced.

1502: Each line of goods, supplies, material, and equipment kept under separate heads, and charges and credits made thereto, so that each branch was clear as to how it stood.

1503: Pay-rolls were kept made up daily, and checked over at end of month. One man assigned specially to check the pay-rolls.

1504: Was personally held responsible for this, and had to make up errors on two occasions from his own pocket for overpayment to men.

1505: Books audited every three months, and Mr. Boyd and Mr. Steel were also there. If any more thorough system could have been devised, would have put it in practice.

1508: Murdochs got their supplies from the Northern Construction Company the same as any other sub-contractor. No one could get anything for nothing.

1510: Saw Rossiter there; gave him all information and he was satisfied.

1512: When DeLacey went over to Murdochs, followed out the same plans. Northern Construction Company continued the same plan of accounting.

1513: No settlements made with sub-contractors or stationmen except in his office.

1515: Married men on the job were allowed to have their household effects freighted in. Other freight items all collected in cash.

1520: Destroyed books after approval of the income-tax returns.

1528: Goods and material all certified, and especially the heavy equipment by Captain Bright. In short, worked on that job the same as if I was employed by the King of England.

This is not qualified to any extent in cross-examination and entirely disposes of the charge.

Paragraph 10: Excessive prices paid for lumber and horse-feed.

Not borne out by the evidence.

Paragraph 11: Charges that tender of Consumers Lumber Company was rejected, and a higher tender accepted for the same class of material from another firm.

Proctor deals with this and shows that Consumers Lumber Company tender was f.o.b. at the mill in Vancouver, and the latter tender for lumber at the mill on the line being constructed.

With freight added to former tender, prices not so good as the tender accepted.

Proctor also denies any such reason for declining Consumers Lumber Company tender as Rossiter alleges.

The charge fails.

Paragraph 12: Charges that Head Office expenditures improperly charged as a part of the cost of construction.

This has reference to Head Office on the work, and were made up by a certain allowance for superintendent, linemen, stenographer, etc., no names being given.

There was, as a matter of fact, no Head Office, as such, on the work.

What was done was this: The Northern Construction Company, being a large contracting concern, were engaged in carrying on several contracts at the same time.

They had offices and a large staff at Vancouver, and what was really done was that, instead of installing offices on the work, they performed the services that would have been rendered at such office through their staff at Vancouver (including the sending-up from time to time of superintendents and linemen), and charged up a proportionate part of the expense of their Vancouver office to this particular work.

This decision was reached at a conference held at the beginning of the work. (Page 1692.)

The amount of this varied from time to time according to the amount of work being done on the construction.

The evidence is that this was at all times a fair proportion, and by doing it in this way there was no greater cost to the Government; in fact, less.

I see no reason to complain of this system and class it as a proper charge.

Paragraph 13: As to Rossiter's being tricked into vouching accounts is, in the light of the evidence, not worth discussing.

Paragraph 14: That payments to the Workmen's Compensation Board were not legally and properly chargeable to the work.

Under the system prevailing under the "Workmen's Compensation Act," by which the employers of labour are assessed by the Board, all the sums paid under such assessment would, in my opinion, be properly chargeable as a part of the cost of the work.

The Pacific Great Eastern Railway were not the employers of the men working for the Northern Construction Company or Murdoch, or any other of the sub-contractors, and would not be assessed by the Board, and the only record the Pacific Great Eastern Railway would have would be that contained in the pay-rolls attached to the monthly estimates.

This is really a question of law and not of evidence.

Paragraph 15: As to the failure of the Premier to investigate matters referred to him by Rossiter.

This is disproved by the Premier's own evidence and letters filed.

Paragraph 16 is based on the affidavit of one P. J. Finnerty, who took a sub-contract for excavating for and putting crib timbers in place.

Although there was a great deal of evidence given under this head, it narrows down to a very short point, and that is: Was the spread between 17 cents per lineal foot which Finnerty received for putting the timber in place in the cribs, and 40 cents, which was allowed Murdoch & Company for the complete cribs, being a difference of 23 cents, a fair and proper spread to allow, or were Murdoch & Company overpaid on this?

On the part of the Government the following witnesses were called, and their evidence (which I do not cite) is to be found at the following pages: Murdoch, 2097 to 2104, inclusive; Swan, 1555 to top of 1565; Proctor, bottom of 1730 to 1739, inclusive.

Vassar, at page 1928, says the 40 cents covered both Finnerty's 17 cents and the filling; there was no duplication in prices for grading and filling. (*See also* page 1929.)

This latter point was raised by Mr. MacNeill and is denied as well by Murdoch.

Campbell, pages 1898 to 1908: Mr. Campbell was a member of a rival firm who tendered for the work. Swan was an independent engineer. Proctor and Vassar were Government engineers.

On the other hand, there is the evidence of Cartwright, an independent engineer, and of Finnerty, the man who put some of the cribs in place.

Finnerty believes, and I think honestly, that he was not fairly dealt with on his contract, and, I believe, gave his evidence honestly from his standpoint; but that is not really the point in issue, and on the question of spread his evidence cannot be given an equal value with that of experienced engineers, no matter how honestly given.

Mr. Cartwright is an experienced engineer and his evidence is to be found at pages 1335 to 1343.

Mr. Cartwright fixes the spread at 3 cents and adheres to it in cross-examination.

Where I do not refer specially to cross-examination, it is not because it was not most searching and skillfully handled by counsel on both sides, but I have read it, and it does not materially affect the evidence in chief.

I can only determine this point upon the preponderance of evidence, and it is largely in favour of the spread allowed being a reasonable one.

With regard to the yardage, Finnerty and Murdoch were allowed the same yardage and the same classification on the excavation done by Finnerty, and if you subtract the yardage on work done by Murdoch & Company on this work, and not done by Finnerty, from the total amount allowed Murdoch & Company in respect of cribbing and culverts, it tallies with the amount allowed Finnerty.

Finnerty claims that the yardage allowed Murdoch was given to him as his own yardage by Vassar, and that a memo. of the amounts was taken by him at the time and is produced and put in as an exhibit. Vassar denies this absolutely.

Finnerty got the right figures, wherever they came from: but the matter is, after all, on that head, one between Murdoch and Finnerty, and I cannot overlook the evidence as to the extra work done by Murdoch, nor can I find on the evidence that the Government overpaid on this yardage.

Dealing generally with the audit: There was no Government auditor during the construction of the work who made any audit of the books of the Northern Construction Company. These books were audited annually by their own auditors, Marwick, Mitchell, Peat & Company.

They were, however, under the terms of the contract, at all times open to inspection by any one on behalf of the Government, and Rossiter, while in their employ, went over frequently to

the office of the Northern Construction Company at Vancouver to check up. Mr. McAfee, who succeeded him, also did the same. (Proctor, page 1710.) Rossiter's work was extremely satisfactory. (Proctor, page 1695.)

Mr. Proctor made the monthly distributions for Buttar & Cheine, auditors of the Pacific Great Eastern Railway Company (the Government), to satisfy them for the purpose of their returns to the Board of Railway Commissioners.

DeLacey, page 1505: The Company's auditors would come up (on the work) about every three months and Mr. Boyd and Mr. Steel were there also to check him.

On examining the items contained in the monthly estimates 1 to 39, indications are that they were all carefully checked, but in a great number of instances they are not certified.

This is dealt with by Gyles. (See extract from page 1403, which I quote later.)

It also appears in evidence that a number of items which Rossiter refused to certify at the time were later on certified by him after explanations had been made.

Estimates were paid where all items not certified to, but these were all finally adjusted, and it would not be reasonable to hold up payment of an estimate because certain items of no great consequence had to be further investigated; and there was always ample work in hand and not paid for to protect all this.

The Pacific Great Eastern accounts after the Government took over the road were audited by Buttar & Cheine, starting with 22nd February, 1918, and following on to the 30th June, 1922. These are in as Exhibits 241, 241A, 241C, 241D, 241E, with which is also connected up 241B, being Marwick, Mitchell & Peat audit to 28th February, 1917.

Full explanations of all these appear in the statements of the auditors at the beginning of the respective reports.

Then follows the final audit of Price, Waterhouse & Company, Exhibit No. 203, on behalf of the Government.

I would refer to the comprehensive nature of this audit, as expressed in the statement at the beginning.

When a chartered accountant of the ability and standing of Mr. Young can find no criticism of this audit other than that by reason of some books and warehouse sales-sheets being missing, it could not be deemed to be a "probe to the bottom" as requested by the Premier, and must necessarily to that extent be a qualified certificate, it would be idle for me to comment further upon it.

Mr. Gyles' evidence that I am taking extracts from is in point on this matter:—

The outstanding point of contention was centred on the submission:—

(1.) By the Provincial Party counsel that a complete audit was not possible, owing to the loss or destruction of:—

(a.) Northern Construction Company ledger, cash-book, and certain warehouse sales-sheets for five months in 1919:

(b.) The destruction of Murdoch's books for 1920 and 1921:

(c.) Absence of settlements with sub-contractors.

(2.) By counsel for the Government that:—

(a.) The loss or destruction of the books and sales-sheets did not affect the audit:

(b.) That all the "underlying details"—viz., the cheques, vouchers, invoices, and pay-rolls—supplied the material in detail, which would appear only in summary form in the ledgers and cash-books:

(c.) That the settlements with the various sub-contractors were not a necessary element to the audit:

(d.) That the absence of the sales-sheets could be overcome, and was overcome, by a test of the operations of the surrounding months in line of comparison.

P. 421: Mr. Boyd states that all the vouchers, except some warehouse sales-sheets for 1919, are available.

P. 424: Price, Waterhouse had all the invoices, pay-rolls, cash disbursements, and warehouse sales-sheets (with the exception of the five months in 1919) to go on in their audit.

P. 1386, Mr. Gyles: As to the warehouse, proved out everything by a general proof of the stores, and that general proof was satisfactory.

P. 1388: The general proof was that no large amount, or any material amount of materials or supplies went on to the road that was not properly accounted for. Items, not of original

record, that were missing, were certain distribution-sheets from the headquarters warehouse in 1919. (Referred to by Mr. Boyd.)

P. 1389: It could not avail the Northern Construction Company to have done away with these sheets.

P. 1391: The loss of the ledgers was annoying, in that it entailed more work, but do not attach a great deal of importance to cash-books or ledgers if we have the original records, such as vouchers and cheques. Made "comprehensive tests."

P. 1395: If had to call for the books of all the people the contractors did business with, the work would be interminable.

P. 1396: Analysed in detail all the estimates, and ascertained that all the expenditures included in those estimates were properly accounted for.

P. 1401: Northern Construction Company officials certified as to the goods received on the work, the prices and accuracy, and in some cases the Engineer.

P. 1403: The invoices and vouchers in Victoria generally lacking in proper certification, but the duplicates retained by the Northern Construction Company bear actual evidence of that having been done.

P. 1406: But the front page, or summary of the accounts in each estimate, is either certified or checked by Rossiter during his time, and afterwards by McAfee.

P. 1411: All the charges to the Government for material and supplies were proven to have gone on the work. And where there were invoices for material, that material was traced on to the work.

P. 1412: Had he been in Mr. Rossiter's position, he would have gone monthly over to the Northern Construction Company and done many things which perhaps some one else might not do, but that is a matter of opinion.

P. 1412: It is also a matter of opinion that the Pacific Great Eastern should have kept an independent accounting system.

P. 1413: They should have kept accounts of the advances to the sub-contractors.

P. 1417: The work (of checking) as carried out affords a reasonable measure of supervision and check.

P. 1426: Agrees it was not the general practice of the Government officials to go and examine goods as they were received.

P. 1427: Generally the vouchers were approved before payment. The Government's approval came through the engineer on the line, and also through the Chief Engineer.

P. 1430: Took the final estimate as a basis. Did not take the single estimates for the purpose of seeing whether there were overpayments or underpayments.

Unless a chartered accountant had been employed by the Government to go over and check monthly the books of the Northern Construction Company with the estimates and data in the hands of the Government to make assurance doubly sure, I can see no more comprehensive system that might be employed than was.

In view of the auditing and checking that have been shown in evidence which did take place, and the final checking, before final settlement, of all items, it does not appear to me that, aside from perfection, which we do not expect to find in any Government or body of men, any reasonable precaution was omitted in this respect which would render it probable that any loss was occasioned thereby.

Under the general heading of gross waste of public money:—

Mr. Young, a chartered accountant, representing George A. Touche & Company, a well-known firm of chartered accountants, was called by Mr. MacNeill and put in a statement, Exhibit No. 315, prepared by him on the assumption that no part of the commission of $5\frac{1}{2}$ per cent. was payable to the Northern Construction Company until the work was completed, and showing that on such an assumption the Government having paid this commission, or, in other words, added it to the monthly statements from time to time, and assuming that the Northern Construction Company was properly chargeable with interest at 6 per cent. on these payments from time to time, it would have amounted to approximately \$43,000.

In construing the clause regarding the payment of the $5\frac{1}{2}$ per cent. commission where it appears first in the contract for 42 miles, the Government might have been justified in strictness in holding back any part of the commission until that work was completed, and the same may be said of the subsequent contracts to which it applied.

As pointed out by Mr. Taylor in cross-examination of Mr. Young, there were five contracts: First, the 42 miles; second, work to April 1st, 1919; third, to Soda Creek; fourth, to Fort George; and fifth, work orders.

Mr. Young's calculation is based as of no payment of commission on any of these until all were completed.

This is not as I would interpret the contract; hence the amount arrived at by Mr. Young would be very materially changed if the contractors were entitled to commission as each and every contract was completed.

The clause is found at K 13 of the returns brought down to the Legislature, showing the contract, and is as follows:—

(2.) The following schedule of prices represents our estimated cost: "If on completion of the work it is found that the total cost exceeds our total estimated cost (exclusive of our commission)—the brackets are mine—which would be arrived at by computing the final measurements at the following schedule of prices, then in such case we to receive 5½ per cent. on the estimated cost only."

It seems to me that the Government might reasonably construe this, and it may be the true construction, as if the words "if on completion of the work" had relation more particularly to the final basis on which commission would be allowed, rather than the time for payment of the commission, and any difference in commission that might be paid from time to time would then be adjusted on that basis; and this would be amply taken care of by the amount due on the final payment for the work.

With respect to the lack of Orders in Council for moneys expended under the second "Loan Act," it appears that, with the exception of three Orders at the beginning for comparatively small amounts, no Orders in Council for each payment made were forthcoming, which was the procedure carried out under the first "Loan Act."

What was done was what I will term an omnibus Order in Council was passed turning over the proceeds of the second loan, some \$4,000,000, to the Railway Board, composed of the Premier, the Minister of Finance, and the Attorney-General, with Mr. Campbell as Secretary, for the purpose, among others, of being expended in the construction of the road.

This does not, perhaps, come strictly under the inquiry, and is more a matter of comment on the businesslike methods adopted.

As I understand it, the money was handed over to the Board to be by them applied to certain specified purposes, and the Board would have to account to the Government for the carrying-out of this trust. I do not think that it necessarily carried with it the applying to the Lieutenant-Governor in Council for an Order for the payment of each account, though I think such a practice would have been better and would have at least prevented this discussion.

It is not suggested that by reason of this any moneys were improperly expended.

A matter developed during the inquiry which, though not covered by the specific charges, was so connected up with the general statement of gross waste of public money and the defrauding of the Province that I considered it only proper that it should be dealt with.

This was in connection with an allowance of 100,000 yards of earth to Murdoch & Company, as shown in the final profile, Exhibit No. 309, covering 10 miles on the Quesnel revision.

This profile was prepared, or at least the earth quantities which are in question were filled in on the profile by the Government engineer, Vassar, whose duty it was.

Murdoch & Company were paid for this the sum of \$40,000, being the proper allowance if such quantities existed.

The suggestion is that they did not, and that they were deliberately filled in by Vassar to give Murdoch & Company the benefit.

This is, of course, a very serious charge.

Mr. Cartwright was called on this by the Provincial Party and his evidence is to be found between pages 2359 and 2368. In this evidence he explains why he comes to his conclusion, and swears that his conclusion is that the allowance is crooked.

A young engineer of less experience, a Mr. MacRae, was called on the same side and gives his reasons between pages 2371 and 2378, and while he declines to say it is crooked, he points out a number of changes in figures, and other alterations, which he says should not appear in any final profile, and would say that the earth had been added after the quantities had been put on.

"This evidence is based on the profile itself and the quantities that were turned in in the estimates before the final profile was prepared, which do not agree.

"I have examined the profile carefully, both with the naked eye and under a glass, and I must say frankly that if I had to determine the question on the appearance of that alone, I should have doubts as to its genuineness.

However, there are other things I have to consider in this connection.

First, these quantities are certified to as correct by Vassar, the Chief Engineer, Proctor, and Bright, the Assistant Engineer. (Exhibit No. 307.)

As to this certification, Cartwright says: "It is just possible Mr. Proctor took his (Vassar's) figures."

In view of the fact that Proctor's attention would be challenged by the difference in the figures as between the estimates and the profile, this could hardly be so. It would be a direct breach of his duty, and no engineer of any reputation would do such a thing. Besides, he says in his evidence and in his letter to Bright (Exhibit No. 313): "I discovered this error myself in going over the details with Vassar."

As to Bright, Cartwright says at page 2368: "Captain Bright declined the responsibility, signed the estimate, and left it to Proctor and Vassar to account for the error that they found."

Unfortunately, Captain Bright, who was in attendance during a part of the inquiry, was taken suddenly ill and was taken to the Vancouver Hospital to undergo a serious operation, which, I am informed, was postponed owing to his weakened condition, and we have not been able to have the benefit of his evidence.

In view of this, and lest I might be doing Captain Bright (whom I have known favourably for many years) an injustice, I will simply consider the fact that he signed the final estimate, but without the added force that would be given to his signature if I had proof which he could supply that he had checked up finally with his own.

I would, from my knowledge of him, certainly expect he would, but without proof I cannot so find as a fact.

Both Proctor and Vassar swear that Exhibit No. 307 shows the correct quantities, and not the estimates, as they were only progress estimates, always subject to revision, and might contain much larger or smaller quantities than would appear on the final profile.

Vassar's evidence under a searching cross-examination by Mr. Tait is to be found between pages 2014 and 2054, and perhaps more directly in point, between pages 2038 and 2054.

Of course, it is too burdensome to quote all this evidence, but in order that some idea as to its nature may appear in the report, I quote a number of questions put by myself, and the answers thereto, which I think show the general trend of the evidence. (Pages 2046 to top of 2049.)

"The Commissioner: You say the hundred thousand yards are accounted for from Mile 8 to Mile what?

"Mr. Tait: From the beginning to the end of this profile, right from 10 to 1, practically, the figures have been changed and read so as to account for an additional one hundred thousand cubic yards of earth. That is the suggestion.

"The Commissioner: Your suggestion is that there is one hundred thousand cubic yards of earth more given to Murdoch & Company in this.

"Mr. Tait: Murdoch & Company.

"The Commissioner: Than they should have got.

"Mr. Tait: Than they should have got; and that that having been done, this profile has been doctored up to correspond with it. And that, flatly, is the suggestion.

"The Commissioner: Yes; I quite see what your suggestion is. Now, Mr. Vassar, your attention has been drawn by Mr. Tait to these different changes, and you say, yes, those changes have been made; you say also that they have been made in the hard-pan and the solid rock?

"A.—Yes; changes made all the way through, Your Lordship.

"Q.—And the summary has also been changed. Now you say, then, as I understood your evidence, those were not made at a different time?

"A.—No, no; that was all put in at the same time. All at the same time, Your Lordship.

"Q.—Now, do these figures we are dealing with now, that is entirely as I understand with earth—do these figures and these changes that have been made, both in the summary and the final summary as I take it at the end—do they or do they not represent the true quantities?

"A.—Absolutely the true quantities?

"Q.—Wait a minute until I finish my question; the true quantities of earth excavated by Murdoch & Company on this contract?

"A.—Yes, Your Lordship, absolutely.

"Q.—Beyond any question?

"A.—Beyond any question of doubt; taken from the field-notes and field-books of my resident engineers.

"Q.—Now, how do you account, then, for so many changes having been made on this profile?

"A.—The profile is full of changes, Your Lordship, made possibly in copying the notes from the books.

"Q.—It may be full of changes, but how do you account for that fact; give me some reason why the profile should be so.

"A.—Well, it is quite easy to make a mistake in figures in copying from a book to a profile. Unfortunately, I am a very poor draughtsman.

"Q.—That may be; you may make a mistake in figures; but would you make a mistake in taking this one here—evidently this started clearing, and then grubbing?

"A.—Yes; well, that is purely a draughting error.

"Q.—That may be a draughting error. But then comes excavation, hard-pan, rock, cribs, and so on. Now, while you might make mistakes in figures, how do you account for an earth item, and another item under the heading of earth, being left out altogether?

"A.—This possibly was made after some profiles that had been made before, when the earth item did not enter in at all; and you are very likely to overlook it.

"Q.—Wait until I see. That would be a profile then really—if anything, where earth would not appear on it at all?

"A.—Yes.

"Q.—Because earth had not at that time been classified?

"A.—The Cottonwood profile—I think there are miles of that that no earth appears at all; and the same thing appears on the other profiles; that Mile 12, I don't think earth appeared on it at all.

"Q.—However, we have the profile before us with these changes; and can you give any other explanation of it than what you have given?

"A.—I think that is all that is necessary, Your Lordship.

"Q.—I am not putting it all that is necessary, but asking you, can you?

"A.—I think that is all the explanation I can give.

"Q.—All that you can give. And in the face of all that, you are definite and positive in your statement that these quantities of earth were excavated and were properly allowed for?

"A.—Absolutely, Your Lordship. Absolutely.

"Q.—A' right."

Then follows Proctor's cross-examination by Mr. MacNeill along the same lines, to be found between pages 2062 and 2134, with some evidence of Murdoch and Cowie interjected.

It is a little difficult to follow Mr. Proctor's explanations in some instances, but in several places he is emphatic in stating that only the correct amount of earth was paid for, and I can understand, although not clearly demonstrated, how these differences could occur.

Murdoch swears he did not receive payment for a yard of earth that he was not entitled to, and that if he had been looking for an increase he would not have sought it on earth excavation.

Beyond all this, I find myself faced with this condition: that if, as alleged, a fraud was perpetrated, Murdoch & Company must have known of it; Vassar, Proctor, and Bright would know of it; and the Northern Construction Company would know of it.

In other words, five distinct parties would be parties to that fraud, and I would in effect have to consider the probability of such being the case.

I have given this a great deal of thought and consideration, and have spent considerable time in perusing the evidence and checking up the figures, and my view is that I would not be warranted in coming to such a conclusion on the documents alone, and against the evidence.

Moreover, it would hardly be fair to charge this as against the Government, they having before them the certificate signed by their three engineers as to the final quantities.

During the inquiry considerable comment was made on certain books of the Northern Construction Company and Murdoch & Company being missing.

These were the books of the respective companies, and after the transactions recorded therein, were closed, unless some sinister motive can be imputed in destroying them, there is no point to it.

Boyd and McLennan, two of the officials of the Northern Construction Company, were called on this point, and their evidence is to be found: Boyd, pages 405 to 433, inclusive; McLennan, pages 618 to 634, inclusive.

DeLacey and Murdoch were examined as to the missing books of Murdoch & Company, and their evidence is to be found: DeLacey, pages 1519 to 1531, inclusive; Murdoch, pages 2139 to 2141, inclusive.

This evidence, I think, disposes of any such imputation.

I have read Mr. Fairweather's evidence, partly directed to showing that there was no reason for increase in prices, and partly to showing an enormous profit made on this work.

Like all estimates of this kind, where all details are not available, and where many matters are left out of consideration that might entirely change the aspect of things, any computation of figures could be of little use in face of the evidence, and, what would really be required, a complete audit.

It may be right, mathematically on the premises on which it is based, and yet be far from the actual facts.

The affidavits upon which these charges are founded, like all affidavits which do not disclose all the facts, tend to create in the public mind impressions which may disappear entirely on investigation, and which would not be created if the full facts were known.

I was asked to admit as evidence an affidavit by a Mrs. Bell, the widow of one of the tie contractors.

I refused the application. I did not see the affidavit and do not know its contents, but it must, I think, necessarily be founded on hearsay, and, speaking generally of affidavits of that nature, I think it would be a most mischievous practice to admit them.

Any one would be at the mercy of an unscrupulous person who (on information that might not be founded on fact or maliciously, and founded on no information at all) might make certain statements on affidavit, and still more so if not present for cross-examination.

To sum up in a few words, I find nothing in the evidence in this inquiry to warrant the imputation that there was anything dishonest, or any dereliction in duty, or disregard of the public interests, or waste, extravagance, or incompetence in the carrying-out of this work by the Government.

In conducting a work of this magnitude, it would be astonishing if some errors or mistakes were not made, and perhaps I might say, more thorough methods in some instances might have been adopted; but, on the whole, considering the handicap that those carrying on railway-construction during these years laboured under, it is not surprising that the work has cost the country large sums of money.

If my report has been more lengthy than I anticipated, my excuse is that in dealing with an inquiry into the expenditure of the people's money, I think it is due to the people that I should give to them the reasons for my conclusions, and in doing so I find it difficult to curtail it.

All of which is respectfully submitted.

Dated at Victoria, British Columbia, this 22nd day of April, 1924.

W. A. GALLIHER,

Commissioner.

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